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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.

BCIS, AAO, 20 Mass, 3/F

Washington, D.C. 20536

JUL 17 2003

FILE: [REDACTED]

Office: Jacksonville (MIA)

Date:

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212
of the Immigration and Nationality Act, 8 U.S.C. § 1182

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines who was admitted to the United States on July 20, 1994, as a nonimmigrant fiancée to marry [REDACTED]. After discovering that [REDACTED] was in prison and would be there until at least 1999, she married him by proxy within the required 90 day period. Since that marriage was never consummated, her Application for Permanent Residence was denied on February 20, 1996, and she was granted until March 20, 1996, to depart the United States voluntarily. The applicant failed to depart.

On April 10, 1997, the applicant's marriage to [REDACTED] was dissolved and she married [REDACTED] on that same date. On May 27, 1997, she became the beneficiary of a Petition for Alien Relative, and filed an application for adjustment of status to Permanent Residence.

On November 14, 2001, the acting district director denied the applicant's Application for Permanent Residence because that application was not based on her marriage to the petitioner who filed the fiancé(e) visa petition. A waiver of the application filed on July 11, 2002 was denied by the acting district director on August 13, 2002. In his decision the acting district director denied the waiver application stating that there is no waiver of section 245(d).

On appeal, counsel discusses facts regarding this matter that have already been reviewed and discussed previously. Counsel states that the applicant is now in a bona fide marriage and is requesting a waiver of section 245(d) so that she can adjust her status. He further states that the AAO has jurisdiction to make a decision on the applicant's appeal according to 8 C.F.R. § 103.3.

While the acting district director was correct in his determination that there is no waiver of section 245(d), he was incorrect in stating on his cover letter that an appeal may be filed with the AAO. 8 C.F.R. § 103.1(f)(2) lists the various applications and petitions over which the AAO has appellate jurisdiction. Applications for adjustment of status under section 245 of the Act are not included in this list. As there does not appear to be an issue of inadmissibility related to the I-601 waiver request, the AAO has no jurisdiction. Therefore, the appeal will be dismissed, and the application will be declared moot.

ORDER: The appeal is dismissed. The application is declared moot.